

APPEAL NO. 052472
FILED DECEMBER 28, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 22, 2005, with (hearing officer 1) presiding as hearing officer. Hearing officer 1 resolved the disputed issue by deciding that the respondent 1 (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter but is not entitled to SIBs for the 12th quarter. On October 17, 2005, (hearing officer 2) issued a "Commission Order for Attorney's Fees" denying all of the 38.10 hours of attorney time, .70 hours for legal assistant time, and \$50.00 for expenses requested by the appellant (attorney). The attorney appealed, noting that hearing officer 2 denied 23.5 of the requested hours for "exceeded guidelines" and "multiple reasons." The attorney argues that "multiple reasons" is not a sufficient denial of attorney fees because it does not allow a meaningful review and that "exceeded guidelines" is an inappropriate reason to deny fees because the guidelines do not apply to SIBs cases. The attorney also appealed the denial of the items by the hearing officer for the reason that the "service provided was unclear" and denial of travel time to attend a Texas Department of Insurance, Division of Workers' Compensation (Division) proceeding. The attorney argues that the justification provided explained the requested time and expenses and that travel time is reimbursable. The appeal file did not contain a response from either the claimant or respondent 2 (carrier).

DECISION

Reversed and remanded.

The claimant's attorney represented the claimant with regard to SIBs for the 11th and 12th quarters. Hearing officer 1 determined that that the claimant was entitled to SIBs for the 11th quarter but not the 12th quarter. The records reflect that the carrier appealed the determination that the claimant was entitled to SIBs for the 11th quarter but the hearing officer's determination became the final decision of the Appeals Panel. The claimant's attorney subsequently submitted attorney's fees related to what appears to be both the 11th and 12th quarters. The Attorney Fee Processing System (AFPS) indicates that no justification text was provided by the attorney for the fees requested. However, in her appeal, the attorney contends that justification supporting the requested fees were included in the application.

Since this case involves a claimant's attorney's fees in a SIBs dispute, Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)) apply. Both of those provisions speak in terms of reasonable and necessary attorney's fees and provide for payment of the attorney's fees by the carrier. Rule 152.4 regarding guidelines for legal services does not apply. Appeals Panel Decision (APD) 970805, decided June 18, 1997. The AFPS indicates that hearing officer 2 entered a log text explaining that the "fee was not approvable as a SIBs attorney fee."

We review attorney's fees cases under an abuse-of-discretion standard. APD 951196, decided August 28, 1995. The hearing officer provides no reasoned justification for disapproving the disputed items but merely indicates that some of the disputed fees "Ex Guideline/Unreasonabl," that some of the disputed fees were denied because the service provided was unclear, including attending the CCH, and further denied travel time for "multiple reasons." As such, we have no basis upon which to determine whether or not the hearing officer abused his discretion in disapproving those items. APD 960158, decided March 5, 1996; APD 970423, decided May 15, 1997. Accordingly, we reverse the Order as to the disapproved items and remand for the hearing officer to reconsider the hours and requested fees which were denied and to determine whether all or any portion of those fees are reasonable and necessary. The hearing officer should provide a reasoned justification for disallowing any item he disapproves. The hearing officer may, at his discretion, hold a hearing on remand or allow the parties to submit and respond to written materials.

For purposes of the hearing on remand, the hearing officer is advised that we have previously determined that where, as here, the adjudication of SIBs dispute has resulted in a determination of entitlement to some quarters and nonentitlement to other quarters, the hearing officer entering the order on attorney's fees must allocate the fees amongst the different quarters in that the carrier is only liable for the portion of the fees attributable to the SIBs quarters to which it disputed the claimant's entitlement and on which the claimant later prevailed. APD 971268, decided August 11, 1997; APD 971019, decided July 15, 1997. In addition, at the hearing of remand, the hearing officer should consider that in APD 011478-s, decided August 13, 2001, we determined that under the language of Section 408.147(c), the carrier does not become liable for attorney's fees until it disputes the claimant's entitlement to SIBs by filing its request for a benefit review conference.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge